

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIK LITTLE,

Petitioner,

v.

CASE NO. 2:08-cv-10396
HONORABLE GERALD E. ROSEN

JAN TROMBLEY,

Respondent.

ORDER GRANTING
MOTION TO AMEND PETITION AND MODIFY SCHEDULING ORDER

Petitioner Erik Little filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Subsequently, Petitioner retained counsel. Petitioner has filed two motions seeking leave to amend his petition and to modify the scheduling order. (Dkt. Nos. 5 and 12). The parties have stipulated to a scheduling order that would allow Petitioner to file an amended petition within 60 days of the date of this Order, that would deem Respondent's response filed on November 7, 2008 held in abeyance, and that would allow Respondent to file a response to Petitioner's amended petition within 30 days of the filing of the amended petition.

A party may amend its pleading "once as a matter of course before being served with a responsive pleading." Fed. R. Civ. P. 15(a)(1)(A). "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave." *Id.* 15(a)(2). Leave to amend should be freely granted when justice so requires. *Id.* Respondent has served his responsive pleading. (Dkt. No. 9). Respondent has consented to the amendment of the petition. Petitioner should have but did not submit a proposed amended petition along with his motion. The Court is therefore unable to determine whether the amended petition relates back to the date of the original petition. *See generally Mayle v. Felix*, 545 U.S. 644 (2005) (whether amended pleading

relates back to the filing date of the original petition for writ of habeas corpus under Fed. R. Civ. P. 15(c)(2) so as to avoid the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1)).

Whereas Respondent consents to the amendment of the original petition in this matter, and the parties stipulate to a scheduling time frame, **IT IS HEREBY ORDERED** that Petitioner's Amended Unopposed Motion to Modify Scheduling Order (Dkt. No. 12) (superceding Unopposed Motion to Modify Scheduling Order (Dkt. No. 5)) is granted. Petitioner shall file his amended petition within 60 days of the date of this order. Respondent shall file his response to the amended petition within 30 days of the filing of the amended petition.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: February 13, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 13, 2009, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager